

GVNW Consulting, Inc.  
Comments in CC Docket No. 96-45 (DA 05-105)  
February 8, 2005

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Sandwich Isles Communications, Inc.	)	
	)	
Petition for Waiver of the Definition of	)	CC Docket No. 96-45
“Study Area” Contained in Part 36,	)	DA 05-105
Appendix-Glossary and Sections 36.611,	)	
And 69.2(hh) of the Commission’s Rules	)	

**COMMENTS OF GVNW CONSULTING, INC.**

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## **TABLE OF CONTENTS**

Introduction and Background	3
I. THE SANDWICH ISLES WAIVER MEETS THE REQUISITE TESTS	
Granting of the Sandwich Isles waiver serves the public interest	4
The state PUC and the DHHL do not object to the transfer of the study area	5
There is a less than one percent impact on USF levels	5
II. ABSENT GRANT OF THE SANDWICH ISLES WAIVER, NO OTHER PARTY WILL BE CAPABLE OF ADEQUATELY SERVING THE CUSTOMERS OF THE DEPARTMENT OF HAWAIIAN HOMELANDS (DHHL)	6

## **Introduction and Background**

In response to an October, 2004 Commission Order, Sandwich Isles Communications, Inc. (Sandwich Isles) filed a petition with the Commission on December 27, 2004. The purpose of the Sandwich Isles petition was to request a waiver of the definition of “Study Area”, as codified in the Appendix-Glossary of Part 36, and sections 36.611 and 69.2(hh) of the Commission’s rules. This Sandwich Isles petition responds to the above-referenced Commission order requiring it to seek and obtain a study area waiver in order to be treated as an incumbent local exchange carrier for purposes of receiving universal service support.

In its petition, Sandwich Isles requests that the Commission “reestablish its study area as the Hawaiian Home Lands.”<sup>1</sup>

GVNW Consulting submits these comments in support of Sandwich Isles Communication’s petition for waiver. In its Petition, Sandwich Isles provides the evidence required to meet the Commission’s three-part study area waiver test established in *Eagle* a decade ago. Sandwich Isles further demonstrates that it is uniquely qualified to serve the needs of customers on lands administered by the Department of Hawaiian Home Lands of the State of Hawaii (DHHL).

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<sup>1</sup> Sandwich Isles Communications, Inc., Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary and Sections 36.611, and 69.2(HH) of the Commission’s Rules, CC Docket No. 96-45, filed December 27, 2004, at iii (Sandwich Isles Petition).

## **I. THE SANDWICH ISLES WAIVER MEETS THE REQUISITE TESTS**

The timely request for waiver filed by Sandwich Isles meets the standard three-part test to be applied by the Commission on study area waiver issues. We offer the following review and analysis of this 3-part test, with our initial discussion focused to the commonly-referenced third test, the public interest standard.

### Granting of the Sandwich Isles waiver serves the public interest

One of the seminal tests of the public interest standard is an analysis of whether the subject carrier has provided or is providing significant improvements in service. Sandwich Isles offers conclusive evidence of its commitment to service upgrades with a nearly seven year track record of significant capital investment via \$166 million of Rural Utilities Service capitalization, as noted at page 19 of its Petition. Sandwich Isles has leveraged this capital investment into the accomplishment of extending service to over 4,000 new lots and nearly 1,200 access lines in 20 new communities, with plans to add 14 more communities in 2005 subject to Commission grant of the instant waiver.

In its petition at page 20, Sandwich Isles details its longer term goals of broadband facilities for its customers. With the administration and the Commission's stated goal of broadband connectivity for all Americans, the unique qualifications of Sandwich Isles to serve the Division of Hawaiian Homelands locations as discussed in section II. is particularly cogent to the Commission achieving its stated goal.

The state PUC and the DHHL do not object to the transfer of the study area

Sandwich Isles cites at page 18 of its Petition that it has “met with both state agencies that regulate it, the DHHL and the HPUC and has confirmed that they have not expressed any opposition to a grant of the waivers requested.”

In the January 7, 2005 letter of the State of Hawaii Public Utilities Commission (HPUC), the HPUC notes that it has annually certified to the FCC that SIC should continue to receive federal high-cost support funds.

There is a less than one percent impact on USF levels

This part of the three part test was developed by the Commission a decade ago in its *Eagle* decision, when high cost support did not include the carrier common line costs that at that time were a part of interstate access charges. In sum, the Commission established a standard that a study area change request would not be considered to “have an adverse effect” on the Universal Service Fund if by granting the waiver there would not occur an annual aggregate shift in high cost support of an amount equal to or greater than one-percent of the total high cost fund for the relevant funding period.

Sandwich Isles demonstrates that it meets this test for the relevant period with an impact of well under the one percent threshold. In its Petition at page 18, Sandwich Isles offers calculations based on USAC data (Appendix HC01) that reflect an impact of thirty-nine hundredths of one percent based on first quarter 2005 projections.

In summary, Sandwich Isles meets all three parts of the Commission’s standard and provides an empirical basis for grant of the waiver.

## II. ABSENT GRANT OF THE SANDWICH ISLES WAIVER, NO OTHER PARTY WILL BE CAPABLE OF ADEQUATELY SERVING THE CUSTOMERS OF THE DHHL

Based on a review of the filed petition, Sandwich Isles appears to be the only entity able to adequately serve the needs of the DHHL residents. The circumstances in play on the DHHL territory are unlike those in any other area of the Commission's jurisdiction, based on what occurred when Hawaii joined the union in 1959.

This unique situation is driven by the legal status accorded to the DHHL. As detailed in the Petition at page 6, the DHHL "retains exclusive management authority for HHL." As a part of this authority, the DHHL is solely empowered to grant easements to provide communications services on the HHL territory.

The facts of the HHL situation are relatively straightforward. In May 1995, the DHHL issued one telecommunications license to Waimana Enterprises, the parent corporation of Sandwich Isles. No such license was granted to GTE. Under the binding agreements on both the federal government and new state government concomitant with Hawaii statehood, no other entity may grant such permission. In simplest terms, the requisite "easements to serve" are held only by Sandwich Isles.

As detailed at page 5 of the Petition, the DHHL designated Sandwich Isles as an ETC in 1997 and reaffirmed this designation in 1998. In 1998, the Common Carrier Bureau issued a proper decision relative to Sandwich Isles status and in late 1998; the HPUC affirmed the designation of Sandwich Isles as an ETC for the service area "consisting of lands administered by the DHHL." In order to comport with applicable federal and state law, that should have been the end of the story.

But it wasn't. Notwithstanding logic and the still applicable unique status of the DHHL, the Commission's October 2004 Order ignored important facts and thus necessitated the instant petition from Sandwich Isles. In order to fulfill the Congressional mandate detailed under the original and the amended Communications Act, a reversal of the October 2004 decision is in order.

Further, in order to fulfill its role as an "expert agency" accorded it under a *Chevron* standard test, the Commission must account for unique circumstances such as those evidenced in the situation of Sandwich Isles and the DHHL.

Based on the agreements the federal government made with the state of Hawaii 46 years ago, the Commission must grant the waiver to SIC due to the unique circumstances surrounding the DHHL.

Respectfully submitted,

*Submitted via ECFS*

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